

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074

MINORITY (202) 225-5051

<http://oversight.house.gov>

April 11, 2016

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460

Dear Administrator McCarthy:

The Environmental Protection Agency's Science Advisory Board (SAB) is comprised of non-EPA experts who broadly advise the agency on scientific and technical matters and conduct peer review of EPA science and regulations.<sup>1</sup> The Clean Air Scientific Advisory Committee (CASAC) consists of non-EPA experts who provide technical advice and consultation regarding EPA's national ambient air quality standards program.<sup>2</sup> Under the law, all members who serve on the SAB and CASAC must be strictly and independently objective.<sup>3</sup> For vetting purposes, all prospective members must disclose to EPA all activities that "would present a conflict of interest or might raise an appearance of a lack of impartiality."<sup>4</sup>

To help the Committee understand the reliability of EPA's conflicts assessment for SAB and CASAC appointees, please provide all forms entitled "Confidential Financial Disclosure Form for Environmental Protection Agency Special Government Employees (EPA Form 3110-48)" submitted to EPA from current SAB and CASAC members. EPA's "Confidential Financial Disclosure Form for Environmental Protection Agency Special Government Employees (EPA Form 3110-48)" expressly provides that this information may be provided to the Committee.<sup>5</sup>

Please provide this information as soon as possible, but no later than 5:00 p.m. on April 25, 2016. When producing documents to the Committee, please deliver production sets to the

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<sup>1</sup> EPA website, "EPA Science Advisory Board Staff," *available at* <https://yosemite.epa.gov/sab/sabproduct.nsf/Web/SABSO/index> (last visited Mar. 29, 2016).

<sup>2</sup> *Id.*

<sup>3</sup> 18 U.S.C. §208.

<sup>4</sup> EPA website, "Serving on the EPA Science Advisory Board," *available at* [https://yosemite.epa.gov/sab/sabproduct.nsf/Web/Serving%20on%20the%20EPA%20Science%20Advisory%20Board:%20A%20Handbook%20for%20Members%20and%20Consultants/\\$File/Serving%20on%20the%20EPA%20Science%20Advisory%20Board%20SABSO-12-001.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/Web/Serving%20on%20the%20EPA%20Science%20Advisory%20Board:%20A%20Handbook%20for%20Members%20and%20Consultants/$File/Serving%20on%20the%20EPA%20Science%20Advisory%20Board%20SABSO-12-001.pdf) (last visited Mar. 29, 2016).

<sup>5</sup> EPA website, "Confidential Financial Disclosure form for Environmental Protection Agency Special Government Employees (EPA Form 3110-48)," *available at* [https://yosemite.epa.gov/sab/sabproduct.nsf/Web/Form3110-48exp2018/\\$File/EPA3110-48exp2018.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/Web/Form3110-48exp2018/$File/EPA3110-48exp2018.pdf) (last visited Mar. 29, 2016).

The Honorable Gina McCarthy

April 11, 2016

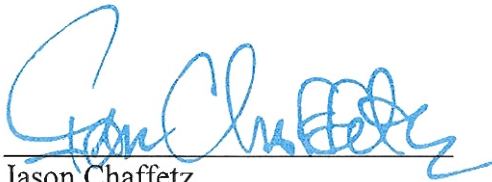
Page 2

Majority staff in Room 2157 of the Rayburn House Office Building. An attachment to this letter provides additional information about responding to the Committee's request.

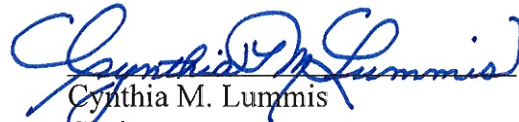
The Committee on Oversight and Government Reform is the principal investigative committee in the U.S. House of Representatives. Pursuant to House Rule X, the Committee has authority to investigate "any matter" at "any time."

Thank you for your cooperation in this matter. If you have any questions regarding this request, please contact Bill McGrath of the Committee staff at (202) 225-5074.

Sincerely,



Jason Chaffetz  
Chairman



Cynthia M. Lummis  
Chairman  
Subcommittee on the Interior

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

The Honorable Brenda L. Lawrence, Ranking Member  
Subcommittee on the Interior

## **Responding to Committee Document Requests**

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;  
  
BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,  
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,  
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,  
CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE,  
DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,  
INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,  
BEGATTACH.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### **Definitions**

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAY 26 2016

The Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
Washington, DC 20515

OFFICE OF  
GENERAL COUNSEL

Dear Mr. Chairman:

Thank you for your letter of April 11, 2016, to the U.S. Environmental Protection Agency, which seeks to understand "the reliability of EPA's conflicts assessment for SAB and CASAC appointees." The Committee has requested that we produce the "Confidential Financial Disclosure Form for Environmental Protection Agency Special Government Employees (EPA Form 3110-48)" submitted to the EPA by current members of the agency's Science Advisory Board and Clean Air Scientific Advisory Committee.

Members of advisory committees and panels of the SAB and CASAC are Special Government Employees, a category of employee created by Congress in 1962.<sup>1</sup> In creating SGEs, Congress recognized the need to apply an "important, but limited, set of conflict of interest requirements to a group of individuals who provide important, but limited, services to the Government."<sup>2</sup> In contrast to high-level executive branch officials who must disclose their finances publicly, SGEs are subject to "less restricted" requirements and, as such, are permitted to file *confidential* financial disclosure reports when first considered for appointment to participate in advisory activities and periodically thereafter.

It is important to distinguish confidential reporting from public reporting. High-level officials disclose their personal financial interests publicly "to ensure confidence in the integrity of the Federal Government by demonstrating that they are able to carry out their duties without compromising the public trust," while the "confidential (nonpublic) financial disclosure system for less senior executive branch personnel in certain designated positions [was established] to facilitate internal agency conflict-of-interest review."<sup>3</sup>

At the EPA, SGEs typically are not high-level officials required to file publicly. Instead, they file the 3110-48, which is an approved alternative version of the confidential financial disclosure report, the OGE-450. As set forth in the Ethics in Government Act of 1978, an agency may require information to be reported on a confidential form that is "more extensive [than that requested of public filers]."<sup>4</sup> Under this authority, the EPA requires that the SGEs disclose even more information than is required of regular government employees, whether those employees file the confidential OGE-450 or the public OGE-278e. For example, SGEs report specifics about their and their spouse's research support and project funding, and describe any public statements that they have made related to the issue under consideration.

<sup>1</sup> See Pub. L. No 87-849, 76 Stat. 1119 (1962) and 18 U.S.C. § 202(a).

<sup>2</sup> Office of Government Ethics (OGE) DAEOgram, DO-00-003 (2/15/00).

<sup>3</sup> 5 C.F.R. §2634.104(a).

<sup>4</sup> 5 U.S.C. app § 107(a)(1).

In acknowledgment of the sensitivity of this personal-privacy protected information, the EPA – like other agencies that use OGE’s Form 450 – makes clear up front that the confidential financial disclosure reports are *confidential* and required to be kept so. They are exempt from release under the Freedom of Information Act<sup>5</sup> and, as set forth in the ethics regulations, “no member of the public shall have access to such reports, except pursuant to the order of a Federal court or as otherwise provided under the Privacy Act.”<sup>6</sup>

On the face of our Form 3110-48, we include the Privacy Act Statement used by the Office of Government Ethics in their OGE-450. It enumerates to the filer the limited set of circumstances under which the agency might disclose a confidential financial disclosure report, including “to a Member of Congress or a congressional office *in response to an inquiry made on behalf of an individual who is the subject of the record*” (emphasis added), which does not appear to be the case presented here. We are concerned that disclosure under circumstances outside the notice provided on the face of the form might have significant unforeseen consequences. Most notably, it could chill the willingness of current and future SAB and CASAC members to serve, thereby restricting the EPA’s ability to utilize the services of experts on an advisory basis.

Nevertheless, the EPA does recognize the Committee’s interest in obtaining the information in this area that may be necessary to perform its legitimate oversight functions. We remain committed to working with your staff through the constitutional accommodations process to address your needs. Please feel free to contact me if you have any questions, or your staff may contact Tom Dickerson of the Office of Congressional and Intergovernmental Relations at [dickerson.tom@epa.gov](mailto:dickerson.tom@epa.gov) or (202) 564-3638.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Minoli".

Kevin Minoli  
Principal Deputy General Counsel

cc: The Honorable Elijah E. Cummings  
Ranking Member

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<sup>5</sup> See 5 U.S.C. 552(b)(3) (A) and (B), (b)(4), and (b)(6).

<sup>6</sup> 5 C.F.R. § 2634.604(b).





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

The Honorable Cynthia M. Lummis  
Chairman  
Subcommittee on the Interior  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
Washington, DC 20515

MAY 26 2016

OFFICE OF  
GENERAL COUNSEL

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Sincerely,

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Kevin Minoli  
Principal Deputy General Counsel

cc: The Honorable Brenda L. Lawrence  
Ranking Member

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<sup>11</sup> See 5 U.S.C. 552(b)(3) (A) and (B), (b)(4), and (b)(6).

<sup>12</sup> 5 C.F.R. § 2634.604(b).